

ER 0-7247

2 NOV 1949

The Honorable Lindsey C. Warren
Comptroller General of the United States
General Accounting Office Building
5th and F Streets
Washington, D. C.

My dear Mr. Warren:

Although the Classification Act of 1949, by its own terms does not apply to the Central Intelligence Agency, its enactment creates certain problems which, I believe, come within the purview of your office. The following is therefore submitted for your consideration.

Section 202 (16) of the Classification Act of 1949 states that:

"This Act...
shall not apply to--

...
(16) the Central Intelligence Agency."

This exemption is complete and it is our opinion that, except for Section 1203, the Central Intelligence Agency is in no way subject to the control of provisions of the Act.

Sections 505 (a) and (b) of the Classification Act provide for the establishment of GS Grades 16, 17, and 18, and state that no position should be placed in Grades 16 or 17 unless approved by the Commission, or in Grade 18 except by the President upon recommendation of the Commission. Furthermore, the number of positions in Grades 16, 17, and 18 are limited to 300, 75, and 25 respectively. Section 505 does not, however, limit the number of these positions in the Government as a whole. It provides only that there shall be but a limited number of these positions in certain grades of the General Schedule. As CIA is specifically exempted from the provisions of this Act, we feel that it is likewise exempted from the limitations as to the number of positions in certain grades of the General Schedule.

GENERAL OFFICE

See GAO Decision B-90432 dated 15 Nov 1949

RESTRICTED

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In view of our belief that the limitations on numbers of positions which may be allocated to GS 16, 17, and 18 are not binding on CIA, we have considered whether CIA has authority to allocate any of its positions to those grades. In this connection, we refer to the following provision of law:

"There is authorized to be employed in each executive department, independent establishment, and the municipal government of the District of Columbia, for services in the District of Columbia or elsewhere, such number of employees of the various classes recognized by sections 661-663, 664-669, 670-672, 673, and 674 of this title, as may be appropriated for by Congress from year to year:..."
(5 USCA 43)

The enumerated sections in this provision are sections of the Classification Act of 1923, as amended. Section 1106 (a) of the Classification Act of 1949 states that whenever reference is made in any other law to the Classification Act of 1923 such reference shall be held and considered to mean the Classification Act of 1949. Therefore, in effect, 5 USCA 43 states that there is authorized to be employed in each executive department such number of employees of the various classes recognized by the Classification Act of 1949 as may be appropriated for by Congress from year to year. It is felt that sums appropriated by Congress for the Central Intelligence Agency may be expended for employees of all the various classes established by the Classification Act of 1949.

Section 10 of the Central Intelligence Act of 1949 provides that:

"(a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including... (2)...personnel... services otherwise authorized by law and regulations, when approved by the Director."
(Public Law 110 - 81st Congress, Approved June 20, 1949)

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As stated above, it is our opinion that this Agency is not bound by the limitations as to numbers of persons to be allocated to Grades 16, 17, and 18, and that 5 USCA 43 in conjunction with Section 10 of the CIA Act is adequate basis for the Director to authorize payment of salaries to those persons to whom the Agency may allocate such grades. It is believed that one of the purposes of the Classification Act of 1949 is to relieve the pressure in the top grades by raising the salary ceiling. It is not believed that it was the intent of the Congress to penalize those agencies which were specifically exempted from the provisions of the Act, by restricting them to an \$11,000 ceiling.

In view of the foregoing, I propose to establish certain positions in this Agency in grades equivalent to those in the General Schedule Grades 16, 17, and 18, as provided in the Classification Act of 1949. These positions would be so allocated on my determination that the responsibilities of the officials concerned would be equivalent to those contemplated by the Congress in establishing these new grades. Since the payment of salaries in these grades appears to present a novel problem coming within the purview of your office, I wish to present for your consideration the question whether you would feel compelled to take exception to vouchers certified for payment in the amounts specified for grades equivalent to the General Schedule Grades 16, 17, and 18 under the Classification Act.

In order to avoid directing undue attention to the functions and activities of this Agency, it will be appreciated if your office will refrain from general circulation of your reply.

Sincerely,

Sig

R. H. HILLENKOETTER
REAR ADMIRAL, USN
DIRECTOR OF CENTRAL INTELLIGENCE

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OPTIONAL FORMS